

Finding of No Significant Impact

Designation of Critical Habitat for the Spikedace and Loach Minnow

The U.S. Fish and Wildlife Service (Service) is designating critical habitat for the spikedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*), pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,013 kilometers (630 miles) of linear distance of rivers are designated for spikedace, and 983 kilometers (610 miles) for loach minnow, including 91.4 meters (300 feet) of adjacent riparian areas measured laterally from each bank are included within the boundaries of the critical habitat designation. The areas that we have determined to be essential to the conservation of the spikedace and/or loach minnow include portions of the Verde River Complex, Black River Complex, Middle Gila/Lower San Pedro/Aravaipa Creek Complex, and San Francisco and Blue Rivers Complex in Arizona, and portions of the San Francisco and Blue Rivers Complex and Upper Gila River Complex in New Mexico. We have excluded lands of the San Carlos Apache, White Mountain Apache, and Yavapai-Apache Tribes, and lands owned by the Freeport-McMoRan on the Gila River, Eagle Creek, San Francisco River, Bear, and Mangas Creeks, pursuant to section 4(b)(2) of the Act. In addition, we have excluded the Upper San Pedro River based on potential impacts to national security at Fort Huachuca.

General description of areas excluded from designation of critical habitat

Tribal Lands

San Carlos Apache Tribe-Eagle Creek

The San Carlos Apache Tribe has one stream within its tribal lands, Eagle Creek, which is known to be currently occupied by the spikedace and loach minnow and contains features that are essential to the conservation of both species. The Tribe has completed and is implementing a Fisheries Management Plan (FMP) that includes specific management actions for the spikedace and loach minnow and conserves the PCEs. In this exclusion, we considered several factors, including our relationship with San Carlos Apache Tribe, and the degree to which the Tribe's FMP provides specific management for the spikedace and loach minnow. Tribal governments protect and manage their resources in the manner that is most beneficial to them. The San Carlos Apache Tribe exercises legislative, administrative, and judicial control over activities within the boundaries of its lands. Additionally, the Tribe has natural resource programs and staff and has enacted the FMP. As trustee for land held in trust by the United States for Indian Tribes, the Bureau of Indian Affairs (BIA) provides technical assistance to the San Carlos Apache Tribe on management planning and oversees a variety of programs on their lands. Spikedace and loach minnow conservation activities have been ongoing on San Carlos Apache tribal lands, and, prior to the completion of their FMP, their natural resource management was consistent with management of habitat for this species. The development and implementation of the efforts formalized in the San Carlos Apache Tribes FMP will continue with or without critical habitat designation.

White Mountain Apache Tribe- East Fork White River

The White Mountain Apache Tribe has two streams within its tribal lands, the mainstem White River and East Fork White River, that are known to be currently occupied by loach minnow and its tribal lands contain features that are essential to the conservation of the loach minnow. The White Mountain Apache Tribe currently has a management plan in place for loach minnow. The plan was completed in 2000 and provides for, among other conservation measures, inventory and monitoring, a water quality protection ordinance, and captive propagation, and relocation to minimize loss from catastrophic events such as fire and drought. Prior to and since the plan was developed, the Tribe has actively managed for loach minnow. In this exclusion, we considered several factors, including our relationship with the White Mountain Apache Tribe, and the degree to which the Tribe's management plan provides specific management for the loach minnow and conserves its PCEs. Tribal governments protect and manage their resources in the manner that is most beneficial to them. The White Mountain Apache Tribe exercises legislative, administrative, and judicial control over activities within the boundaries of its lands. Additionally, the Tribe has natural resource programs and staff and has been managing for the conservation of the loach minnow. As trustee for land held in trust by the United States for Indian Tribes, the BIA provides technical assistance to the White Mountain Apache Tribe on management planning and oversees a variety of programs on their lands. The development and implementation of the efforts formalized in the management plan will continue with or without critical habitat designation.

Yavapai Apache Nation-Verde River

The Yavapai-Apache Nation has two streams within its tribal lands, the mainstem Verde River and Beaver/Wet Beaver Creek. The Yavapai Apache Tribe has long worked to protect the Verde River and its surrounding habitat as it flows on the lands of the Nation. The Nation is implementing strong conservation measures designed to preserve the Verde River and its riparian corridor for the benefit of all species, and in order to protect the traditional and cultural practices of the Nation. The Nation's continued efforts to work cooperatively with the Service to protect federally listed species have previously been demonstrated through adoption of a recent Southwestern Willow Flycatcher Management Plan, dated May 25, 2005. This document provides realistic and practicable objectives for protection of the riparian community on tribal lands. This habitat is coexistent with the habitat that was proposed for the spinedace. Because the existing Management Plan requires that the habitat of the Verde River be protected and preserved for the flycatcher, its protections similarly extend to the spinedace. In addition, the Tribe passed a resolution on June 15, 2006, confirming and declaring a riparian conservation corridor along the Verde River including 300 ft (91.4 m) on either side of the river. Within the conservation corridor stocking of non-native fishes is prohibited, and livestock grazing, construction and other activities shall be minimized to assure that no net loss of habitat for federally listed species such as the spinedace and loach minnow shall occur, and that no permanent modification of habitat important to listed species is allowed. The Tribe will also take all reasonable steps to coordinate with the Service regarding recreational activities, habitat restoration activities, or other activities that may impact the habitat important to the spinedace and loach minnow. The Tribe will monitor habitat, including surveys for these fish and conduct research or other activities to provide a conservation benefit.

We have excluded the river reaches on Tribal lands because we believe the benefits of excluding these units from this final critical habitat designation outweigh the benefits of designating the units as critical habitat. The benefits of excluding San Carlos Apache, White Mountain Apache, and the Yavapai Apache tribal lands from critical habitat include: (1) The advancement of our Federal Indian Trust obligations and our deference to Tribes to develop and implement tribal conservation and natural resource management plans for their lands and resources, which includes the spikedace and loach minnow and other Federal trust species; (2) the maintenance of effective working relationships to promote the conservation of the spikedace and loach minnow and their habitats; (3) the allowance for continued meaningful collaboration and cooperation on spikedace and loach minnow management and other resources of interest to the Federal government; and (4) the provision of conservation benefits to riparian ecosystems and a host of species, including the spikedace and loach minnow and their habitat, that might not otherwise occur.

Partnerships and Management Plans on Private Lands

Eagle Creek and the San Francisco River – Freeport-McMoRan (FMC)

Freeport-McMoRan's lands along Eagle Creek are comprised of individual land parcels adjoining the southern boundary of the Apache-Sitgreaves National Forests and the eastern boundary of San Carlos Apache Tribe lands. The parcels are not entirely connected; there are intervening portions of Forest Service and other private lands between parcels of FMC's lands. The management plan would affect only those lands owned by FMC. Freeport-McMoRan owns land along approximately 13.3 mi (21.4 km) of Eagle Creek, which are covered by the management plan. Freeport McMoRan owns lands along approximately 8.8 mi (14.1 km) of the San Francisco River near Clifton. The Service has determined that Eagle Creek and the San Francisco River currently support one or more of the PCEs for spikedace and loach minnow, that Eagle Creek is occupied by both species and that the San Francisco River is occupied by loach minnow. In addition, we determined that nonnative aquatic species, water diversions, and mining are all potential threats within this area.

Gila River, Bear and Mangas Creeks – Freeport-McMoRan

The Gila River Management Plan covers riparian lands owned by FMC in the middle reach of the mainstem Gila River, and portions of Bear and Mangas Creek in New Mexico. Land ownership in this area is principally Federal, with irregularly dispersed private and State lands.

The management plan would affect only those private lands owned by FMC. Freeport-McMoRan owns lands along these stream segments totaling 13.3 mi (20.3 km). Some of the lands owned by FMC in this area are leased for ranching and agriculture purposes, including the U-Bar Ranch. The Service has determined that these areas currently support one or more of the PCEs for spikedace and loach minnow. The Gila River and Mangas Creek are occupied by both species, while Bear Creek is occupied by loach minnow. Those portions of the mainstem Gila River on Phelps Dodge lands support diversity and abundance of native fishes. In addition, this reach contains a high proportion of favorable habitat for spikedace and loach minnow, including low gradient riffles and glide-runs. In addition, we determined that recreation, roads, grazing, nonnative aquatic species, and water diversions are potential threats in this area that may require

special management or protections.

We have excluded areas under ownership of FMC because we believe that significant benefits would be realized by excluding these areas from the final critical habitat designation: (1) the continuance and strengthening of our relationship with Phelps Dodge to promote the conservation of the spikedace and loach minnow and their habitat; (2) the allowance for collaboration and cooperation in surveys, monitoring, and research as we work towards recovery of these species; and (3) the conservation benefits to the Gila River and Eagle Creek ecosystems and spikedace and loach minnow habitat that might not otherwise occur. The benefits of including lands owned by FMC in the final critical habitat designation are small, and are limited to minimal educational benefits and potentially some benefits through section 7 consultations. We find that the benefits of excluding these areas from the final critical habitat designation outweigh the benefits of their inclusion.

Exclusions based on National Security-Fort Huachuca

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing these designations, we determined that the lands within the designations of critical habitat for spikedace and loach minnow are not owned or managed by the DOD. A nexus exists, however, between critical habitat in the San Pedro River in Subunit 3 and groundwater pumping by the United States Army Garrison Fort Huachuca in Cochise County, Arizona. An additional nexus is created by the geographic areas not owned but designated for use by Fort Huachuca. We find that excluding this 37.2 mi (59.8 km) stretch of the San Pedro River from this final critical habitat will preserve Fort Huachuca's ability to continue with their missions critical to national security. This benefit of continuing critical national security missions are significant and outweigh the minimal additional regulatory and educational benefits of including these lands in final critical habitat for spikedace and loach minnow.

Background

Critical habitat was initially designated for both species in 1994 (59 FR 10898). We previously published a final critical habitat designation on April 25, 2000 (65 FR 24328). In New Mexico Cattle Growers' Association and Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. United States Fish and Wildlife Service, CIV 02-0199 JB/LCS (D.N.M), the plaintiffs challenged the April 25, 2000, critical habitat designation for the spikedace and loach minnow because the economic analysis had been prepared using the same methods which the Tenth Circuit had held to be invalid. The Center for Biological Diversity joined the lawsuit as a Defendant-Intervenor. The Service agreed to a voluntary vacatur of the critical habitat designation, except for the Tonto Creek Complex. On August 31, 2004, the United States District Court for the District of New Mexico set aside the April 25, 2000, critical habitat designation in its entirety and remanded it to the Service for preparation of a new proposed and final designation. On December 20, 2005, we published a proposed critical habitat designation (70 FR 75546). On March 21, 2007, we published a final critical habitat designation (72 FR 13356) for the spikedace and loach minnow.

In *Coalition of Arizona/New Mexico Counties for Stable Economic Growth, et al. v. Salazar, et al.* (D.N.M.), two sets of plaintiffs challenged the Service's critical habitat designation for the spokedace and the loach minnow on the grounds that we designated critical habitat without adequate delineation or justification. We filed a motion for voluntary remand of the final rule on February 2, 2009, in order to reconsider the final rule in light of a recently issued Department of the Interior Solicitor's Opinion, which discusses the Secretary of the Interior's authority to exclude areas from a critical habitat designation under section 4(b)(2) of the ESA. On May 4, 2009, the Court granted our motion for voluntary remand. We published a proposed rule for critical habitat on October 28, 2010 (75 FR 66482), and a Notice of Availability regarding modifications to the proposed rule on October 4, 2011 (76 FR 61330).

Environmental Assessment

The Service requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Arizona and New Mexico. The impact of the designation on State and local governments and their activities was fully considered in the economic analysis. In the final rule we categorized and responded to all applicable, substantive comments received during the public comment periods. All comments received were analyzed and, where appropriate, changes were incorporated into the final environmental assessment, economic analysis, and/or the final rule.

Section 4(b) of the Act states "The Secretary shall make determinations [of critical habitat] ... solely on the basis of the best scientific data available . . ." We considered the best scientific information available to us at this time, as required by the Act. This designation is based upon our most current understanding of the biology and requirements of the spokedace and loach minnow. Based upon newly available information, coordination with land managers and stakeholders, and input received during the public comment period, we have made revisions to the areas designated as critical habitat, which will be reflected in the final rule. We are not aware of any reliable information that is currently available to us that was not considered in this designation process. This final determination constitutes our best assessment of areas needed for the conservation of the species.

One of the purposes of an environmental assessment is to briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact (40 CFR 1508.9). An EIS is required only in instances where a proposed Federal action is expected to have a significant impact on the human environment. In order to determine whether designation of critical habitat would have such an effect, we prepared an environmental assessment that analyzes the effects of the designation. On October 4, 2011, we announced the availability in the Federal Register of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the spokedace and loach minnow (76 FR 61330). We solicited data and comments from the public on these draft documents, as well as on all aspects of our proposal, so that we could consider these in this final determination. An open house and public hearing were held on October 17, 2011, to allow for additional comment.

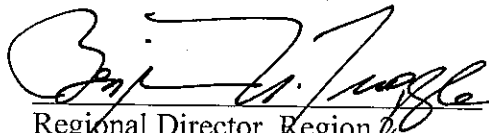
Based on a review and evaluation of the information contained in the environmental assessment, it is my determination that the designation of critical habitat for the spikedace and loach minnow does not constitute a major Federal action having a significant impact on the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). Significance is determined by analyzing the context and intensity of a proposed action (40 CFR 1508.27).

Context refers to the setting of the proposed action and includes consideration of the affected region, affected interests, and locality (40 CFR 1508.27[a]). The context for both the short- and long-term effects of proposed designation of critical habitat includes the local areas that encompass the critical habitat units. The effects of proposed critical habitat designation, although long-term, would be small.

Intensity refers to the severity of an impact and is evaluated by considering ten factors (40 CFR 1508.27[b]). The intensity of potential impacts that may result from proposed designation of critical habitat for the spikedace and loach minnow is low.

- The potential impacts on environmental resources may be both beneficial and adverse, but would generally be minor.
- There would be negligible to minor impacts on public health or safety from designations of critical habitat.
- The increased risks of wildland fire or flooding was analyzed and determined to be minor.
- Potential impacts from critical habitat designations on the quality of the environment are unlikely to be highly controversial.
- Designation of critical habitat for spikedace and loach minnow is not a precedent-setting action with significant effects.
- Designation of critical habitat would not result in significant cumulative impacts.
- Designation of critical habitat is not likely to affect sites, objects, or structures of historical, scientific, or cultural significance because Federal and state laws enacted to protect and preserve those resources would address any such potential impacts.
- The critical habitat designations would have long-term, beneficial impacts for spikedace and loach minnow.
- Critical habitat designations would not violate any Federal, state, or local laws or requirements imposed for the protection of the environment.

As such, an environmental impact statement is not required.


Regional Director, Region 2
U.S. Fish and Wildlife Service

2/6/12
Date

UNITED STATES FISH AND WILDLIFE SERVICE

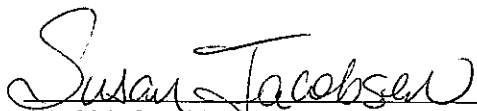
ENVIRONMENTAL ACTION STATEMENT

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act, and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and determined that the action of designating critical habitat for the spinedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*) pursuant to section 4 of the Endangered Species Act of 1973, as amended:

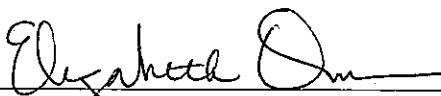
Check One:

- _____ is a Categorical Exclusion (CatEx) as provided by 516 DM 2, Appendix 1, and/or 516 DM 6, Appendix 1 (*reference which CatEx was used for this determination*). No further NEPA documentation will therefore be made.
- X is found not to have significant environmental effects as determined by the attached Environmental Assessment and Finding of No Significant Impact.
- _____ is found to have significant effects and, therefore, further consideration of this action will require a Notice of Intent to be published in the Federal register announcing the decision to prepare an Environmental Impact Statement (EIS).
- _____ is not approved because of unacceptable environmental damage, or violation of Fish and Wildlife Service mandates, policies, regulations, or procedures.
- _____ is an emergency action within the context of 40 CFR 1506.11. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

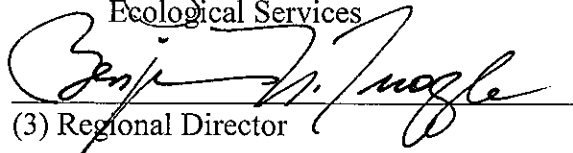
Signature Approval


(1) Chief, Endangered Species

2.6.2012
Date


for (2) Assistant Regional Director -
Ecological Services

2-6-2012
Date


(3) Regional Director

2/6/12
Date